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C O N F I D E N T I A L SECTION 01 OF 03 PRAGUE 000407

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E.O. 12958: DECL: 06/26/2018
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SUBJECT: CZECH RATIFICATION PROCESS FOR MISSILE DEFENSE
AGREEMENTS

Classified By: POLEC COUNSELOR MICHAEL DODMAN FOR REASONS 1.4 (B) AND (D).

¶1. (SBU) Summary: Looking ahead to this fall and the planned Czech ratification of the Missile Defense (MD) agreements, we offer the following summary of the Czech parliament's ratification process. The Czech parliament will hold three separate MD-related votes: BMDA, SOFA, and a resolution approving the deployment of U.S. troops. Only the resolution on the deployment will require absolute majorities of 101 votes in the lower chamber and 41 votes in the Senate for passage; the two agreements can pass with simple majorities in both chambers. The three votes will likely not take place in the same time frame, with the BMDA and SOFA moving through the parliament as a package, followed by the vote on the deployment resolution. End Summary.

Background on Process

¶2. (SBU) The two MD agreements, like any international treaty, will have to be ratified by both houses of the Czech parliament and signed by President Klaus. Both houses can consider and vote on the agreements concurrently. (Note: In the case of other legislation, which can be amended, the Senate only considers legislation after it has been passed by the Lower Chamber. Since international treaties cannot be amended, both houses can consider them at the same time. End Note.)

¶3. (SBU) The ratification process will begin with the MFA forwarding the two MD agreements to both houses of the parliament with a formal description of the agreements and the legislative procedure to be used in approving the agreements. The MFA told us that the legislative procedure document has already been prepared and approved by the government, and that it states that in each chamber, a simple majority of those present, rather than an absolute majority or a constitutional (three-fifths) majority, would be needed for approval of the BMDA and SOFA.

¶4. (SBU) The BMDA and SOFA will be voted on separately. In addition, a resolution similar to resolutions on deployments of Czech troops abroad will have to be approved. By this resolution, the Czech parliament will approve the actual stationing of U.S. troops on the Czech territory. Unlike the BMDA and SOFA, approval of the resolution on the stationing of U.S. troops will require the vote of, the majority of the total number of senators (i.e., 41 out of 81) and the majority of the total number of deputies (i.e., 101 out of 200). (Note: According to the Czech constitution, stationing of foreign troops on the Czech territory requires the approval of the majority of all senators and the majority of all deputies, whether present or not. End Note.)

Ratification Process in the Lower Chamber

15. (SBU) Once the two agreements are forwarded to the Lower Chamber, they will be added to the agenda for the next parliamentary session for their first reading. During the first reading, the deputies vote on sending the agreements to committees. A simple majority of deputies present will be required. The Lower Chamber committees involved would include Foreign Affairs, Defense, and Constitutional-Legal committees, but also possibly the Environment, Health, and other committees.

16. (SBU) According to the Lower Chamber's by-laws, the committees will have 60 days to debate and make recommendation on the agreements. This 60-day period can be shortened to 30 days or extended to 80 days, if approved by the majority of all deputies present during the first reading. At the end of this period, the committees make recommendations on whether the agreements should be approved or rejected in the ratification vote (i.e., second reading) by the entire Chamber. The final (second) vote would likely take place at the next regularly scheduled session of the Lower Chamber. The Lower Chamber could also, at this point, decide to postpone the vote.

17. (SBU) As for the resolution, the government, at the request of the MFA, sends a proposal to station U.S. troops in the Czech Republic to the Chamber. The Organization Committee decides which committees will consider the proposal

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(usually the Defense Committee and the Foreign Affairs Committee, but in this case potentially also the Constitutional-Legal Committee). The committees will make recommendation on whether to approve or reject the proposal. The Chamber would vote on the resolution only once at the next plenary session.

Ratification Process in the Senate

18. (SBU) We expect that the two MD agreements would be forwarded to the Senate at the same time as to the Chamber. Again, the two agreements will be considered by the relevant committee(s), including the Foreign Affairs and Defense Committee, but also possibly the Constitutional-Legal Committee. After the committees have reviewed the agreements, they will recommend to the entire Senate that the agreements be approved (or rejected). The agreements would then be debated and voted on at a plenary session of the Senate. There is no set period of time specified for the Senate debate and consideration, so it is possible that the Senate could move more quickly on the MD agreements than the Chamber.

19. (SBU) Similarly to the Chamber, the government, at the request of the MFA, sends a proposal to station U.S. troops in the Czech Republic to the Senate. The Organization Committee will decide which committees will consider the proposal (usually the Foreign Affairs and Defense Committee, but also potentially the Constitutional-Legal Committee). The committees will make recommendation on whether to approve or reject the proposal. The Senate would vote only once at the next plenary session.

Role of Constitutional Court

10. (SBU) The Constitutional Court could enter the process in three possible scenarios:
-- Either chamber of Parliament (Chamber of Deputies or

Senate) submits to the Constitutional Court a request to review the compatibility (harmony) of the agreement/s with the Czech constitution. The parliamentarians can do this between the day the agreement is submitted to the Chamber or Senate and the day the agreement is ratified. This means, however, that unless the opposition could muster a majority in either chamber in a vote requesting a constitutional review, they would not be able to stop the ratification process.

-- A group of either 41 deputies or 17 senators submits a request between the day the Parliament ratifies the agreements and the day the presidents signs it. Here the opposition could intervene and request a constitutional review relatively easily. However, this would come only after the votes have taken place in the parliament.

-- The President submits a request after the agreement/s was/were submitted for his for signature. In the case of MD, however, this is highly unlikely.

¶11. (SBU) The Constitutional Court assesses the constitutionality of the agreement and issues a finding stating whether the agreement is in harmony with the Constitution or not (in which case it specifies which provisions of the Constitution are violated). The finding that the agreement is not in accordance with the Constitution blocks ratification until the incompatibility is removed.

¶12. (SBU) There is no specific deadline for Constitutional Court to complete the review. However, given the Constitutional Court,s current make up (majority have now been appointed by Klaus) and recent performance in cases such as those concerning the government,s health care reforms, the Court would likely move fairly quickly to consider the MD agreements. MFA lawyers have told us that they expect the Court would rule against any constitutional challenges the opposition might raise.

Timing

¶13. (SBU) While the Czechs have not yet decided on the timing for MD ratification, our conversations with the MFA, MOD, and government indicate that the most likely scenario would be for the government to submit the BMDA and SOFA to the parliament in late August, during a special parliamentary

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session which may be, but has not yet been, called. The special session, if called, would be devoted not only to MD, but also some of the government,s pending reform legislation. With the late August submission, the earliest that the ratification vote could take place would be sometime in late October. Although the fall elections have not yet been announced, we have heard unofficially from our parliament and castle contacts that the regional elections and the first round of the Senate elections will take place on October 17-18, and the second round the Senate elections on October 24-25. This means that if the Czechs stick to the &after the fall elections8 timetable, the earliest that the vote could take place is during the week of October 27.

¶14. (SBU) According to the MFA, a possible constitutional challenge to the BMDA and/or SOFA would likely have no impact on the timing of the vote on the resolution approving the stationing of U.S. troops in the country. The MFA expects the government would submit the resolution shortly after the ratification of the two treaties, possibly before the end of the year.

COMMENT

¶15. (C) The upcoming signing of the BMDA by Secretary Rice and FM Schwarzenberg will give the Czechs a much-needed boost

before what will undoubtedly be a hard-fought ratification battle. The ratification process outlined above is full of potential pitfalls and could be subject to various delays due to the Czech government's uncertain position in the parliament and its internal disputes. The Greens, for example, may demand that the ratification votes take place after the U.S. elections in November, as some in the party have insisted. The coalition's poor performance in the fall elections could also impact the ratification process and timing. What has not changed in the year and a half since we requested the Czech government to enter into negotiations on MD is PM Topolánek and FM Schwarzenberg's determination to see this important foreign policy initiative to a successful conclusion. This determination will be more important than ever during the upcoming ratification votes.

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